SUPREME COURT, U. S.

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ADDITIONAL APPENDIX TO PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

No. 735 October Term, 1967

(1) Jake Klein, (2) Julian Garrett and Loyat Bland Garrett, Husband and Wife,

Plaintiffs

vs.

The United States,

Defendant.

Julian Garrett and Loyat Bland Garrett, Husband and Wife, Neill Garrett and Pearl Garrett, Husband and Wife, and Earl Wagner,

Plaintiffs

vs.

The United States,

Defendant.

Bert A. Bandstra,
116 1/2 East Main
Knoxville, Iowa 50138,
Attorney for Plaintiffs.

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Julian Garrett and Loyal Bland Garrett,
Husband and Wife, Neill Garrett and
Pearl Garrett, Husband and Wife, and
Earl Wagner,

Plaintiffs

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The United States,

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Bert A. Bandstra
116 1/2 East Main
Knoxville, Iowa 50138
Attorney for Plaintiffs

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ADDITIONAL APPENDIX

Pertinent parts of opinions in related cases (2) in the United States District Court for the Southern District of Iowa

U.S. v. 1795.01 Acres etc, and B. Frank Tonda, et al, No. 5-1233, Tract 866 (Involved Garrett-Wagner gravel lease)

MEMORANDUM, filed October 19, 1966

This matter is now before the Court upon objections to the report of the Commission determining just compensation for the taking of the title in fee of tract 866 consisting of 541 acres of land and for the taking of a gravel lease on said premises.

* * * * *

The declaration of taking of the land in question was filed herein on February 14, 1962. Tract 866 was one of thirteen tracts (13) involving the taking of fee simple title. Flowage easements were taken over an additional fifteen (15) tracts. Total estimated compensation deposited with the Court at the time of taking was $302,935. Estimated compensation for the tract in question totalled $62,000. The owners are Julian Garrett and Loyat Bland Garrett, husband and wife, and Neill Garrett and Pearl Garrett, husband and wife, herewith referred to as the Garretts. On June 4, 1963, Earl Wagner was joined as a defendant on account of a sand and gravel lease he entered into with the Garretts on January 8,

1962, approximately one month before the declaration of taking was filed herein.

* * * * * During the course of the hearings before the Commission, the government filed a request for special findings as follow:

> " * * * hereby requests the Commission to set forth in its Findings of Fact and Conclusions of Law whether or not there was any enhancement to Tract No. 866 by virtue of the fact that sand and gravel deposits are located under a portion of said tract. If the answer to the above is in the affirmative, the Commission should set forth the extent of the enhancement, if any.
>
> "That plaintiff makes this request in accordance with the intent of the Supreme Court in U. S. v. Merz, 376 U.S. 192, 198-199 (1964). "

* * * * *

In its report the Commission, after setting out a summary of the evidence offered in behalf of each party, made findings of fact and indicated therein the reasoning they used in arriving at their conclusion as to value. * * * *

* * * * *

g. The Commission finds as a fact that an additional increment should be allowed by reason of the fact that sand and gravel unerlying tract 866 and that such an additional increment should be added in the amount of $16,000.00.

h. The market for gravel is set out on Exhibit Wagner S, showing that Wagner has averaged selling 53,815 tons of gravel from 1958 to 1965 inclusive. At this rate during the life of the Wagner-Garrett contract he would have exhausted about ten acres of the 40 acres in the gravel pit area.

i. The Commission finds that the added increment of $16,000.00 for the gravel under tract 866 is in addition to the $275.00 per acre allowed as farm and cropland and is stated in response to the request of the attorneys for the government."

In conclusion the Commission found that "the highest and best use of tract 866 is for agricultural purposes with a secondary use for the mining of gravel." It found that just compensation for the entire fee simple title to tract #688 to be $121,800.00; that the value of the gravel lease was $5,000.00. The report further shows that the Commission in finding the total

just compensation allocated the same as follows:

350 acres of cropland at $275.00 per acre	$ 96,250.00
191 acres of timber, waste and building sites, including buildings	9,550.00
Additional increment allowed for the underlying sand and gravel under tract 866	16,000.00
Total	$121,800.00

The government's initial complaint is that the Commission erred in allowing separate values for the land and for the alleged existence of sand and gravel underlying the surface, thus violating the so-called unit rule of valuation. United States v. Certain Parcels of Land, 149 F. 2d 81, 82 (5th Cir. 1945); United States v. Cunningham, 246 F. 2d 330, 333 (4th Cir. 1957). It would not be proper for the Commission to arrive at value by adding all the elements of value together. However, it would be proper for the Commission to consider the different values of various parts of the tract, the different uses for which some parts of it were available and it should set out in its report the amount of land available for crop purposes, pasture land, timber land, waste land and the range of values

considered for the various types of land found to exist. The Commission was specifically instructed that the market value of the land as land remains the test. In the second paragraph of Instruction No. 4, the Court instructed as follows:

> "The court further instructs the commissioners that when a tract of land contains minerals, timber, buildings or any other features which constitute a part of the realty, the existence of these features can be taken into consideration, in determining the compensation so far as they affect the market value of the land but the market value of the land as land remains the test and there can be no recovery for any of the foregoing elements valued separately as merchandise as items additional to the value of the land."

The Commission was specifically requested by the government to set out the enhancement, if any, to the tract on account of the deposit of sand and gravel. The government's complaint that the Commission erred in setting out the enhancement value is therefore without merit. Actually the government's chief complaint is that the evidence failed to establish any enhancement value on account of gravel and the Commission failed to indicate how it arrived at the figure of $16,000 for that purpose. A review of the

summary of evidence indicates that there is support for the Commission's findings. Earl Wagner, lessee, under the gravel lease entered upon the land in 1962 and cleared the overburden from 1.7 acres of the 40 acre tract known as the gravel pit, and stockpiled several thousand tons of gravel. He also testified with respect to the market for gravel that existed in that area. He had sold an average of 53,815 tons of gravel from all sources for the years 1958 to 1965. In summary, the government argues that the widespread presence of gravel in the Des Moines River Valley, plus the limited demand in the area just does not warrant a finding that the value of the land for sand and gravel production enhanced the overall value of tract 866 in the sum of $16,000.

It should also now be noted that defendant Earl Wagner strenuously objects to the Commission's findings regarding value for sand and gravel as being too low. He contends that on the basis of borings or tests conducted by himself on 38 acres of the land in question, the same had a value for gravel purposes of $1,500 per acre or a total of $57,000. He further contends that the Commission failed to consider the owner's (Julian Garrett) testimony that the gravel bearing lands in the tract extended to two hundred (200) acres or a total value of $200,000. Defendants, Garretts, likewise contend the enhancement value of $16,000 is grossly inadequate. They particularly argue that the Commission failed to consider Julian Garrett's testimony that two hundred acres of land were underlaid with gravel. It

should also be noted that all defendants object to the Commission striking the testimony of L. J. Peters concerning the sale of a gravel pit near Runnells, Iowa, by Earl Wagner to L. J. Peters for $2,800 for two (2) acres. The sale took place subsequent to the date of taking of the tract in question and evidence regarding the same was properly disregarded by the Commission.

It is the view of the Court that the evidence, including the summary of evidence, plus the exhibits, amply supports the findings of the Commission as to the enhancement of value due to the presence of sand and gravel. The amount thereof is a matter of judgment and the Commission need not set out any formula for arriving at its opinion. In fact, if a formula were used that method would probably be in error. The Court is satisfied that the Commission weighed the various factors which influenced the market value of the land for sand and gravel purposes. The mere presence of sand and gravel is not enough. "There must be some objective support for the future demand, including volume and duration." Mills v. United States, 363 F. 2d 78 (8th Cir. 1966). The record supports the Commission's finding that there was sand and gravel in quantity underlying the tract in question of a marketable quality and that there was a market therefor in limited quantities. In so doing it is clear that the Commission properly rejected defendants' contentions that the mere presence of gravel in large quantities warranted

a finding of a high value which was purely speculative in view of the limited market then available or reasonably foreseeable in the future. United States v. 599.86 Acres of Land, 240 F. Supp. 563, 572 (W. D. Ark. 1965). On the other hand, there was substantial evidence indicating there was a limited market for gravel which taken together with the presence of gravel on the tract in question formed a basis for the Commission's judgment that the presence of sand and gravel enhanced the market value of the tract.

The next dispute involves the question of the value of the sand and gravel lease known as the Wagner-Garrett Lease, which was entered into on January 8, 1962. The government fails to see how any value can be assigned to the lease in view of the Commission's finding of fact: "2. a. There is no direct testimony of the fair and reasonable value of the lease." The government ignores the further findings of the Commission with respect to the gravel lease which are as follows:

> "2. b. There is, however, evidence of the existence of sand and gravel in quantity underlying tract 866 and of a marketable quality.
>
> c. There is evidence of the market, in the area of tract 866, for mine run gravel in limited quantities.

d. There is evidence that the operation of a gravel pit on tract 866 would be profitable.

e. Based upon the market, the quantity and quality of the sand and gravel and the reasonable profit which could be anticipated the Commission finds that the just compensation to Earl Wagner for the taking of the lease of January 8, 1962, is $5,000.00."

Defendant Wagner contends the award of $5,000 is clearly erroneous for all of the reasons set out in urging that the finding of $16,000 for enhancement value was inadequate. Defendants Garretts are not concerned with the value assigned to the lease but do argue that under no circumstances should the award of $5,000 be deducted from the total award of $121,800.00 for tract 866 and that any award for the gravel lease should be in addition to that awarded for the tract, citing, Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W. 2d 205; Batcheller v. Iowa State Highway Commission, 251 Iowa 364, 368-69, 101 N.W. 2d 30. The government and Wagner apparently agree that federal law applies and whatever value is assigned to the lease should be deducted from the total award. Eagle Lake Improvement Co. v. U. S., 160 F. 2d 182 (5th Cir. 1949). However, the government contends that the matter of distribution is a question for the Court and not the Commission.

Initially it should be noted that all defendants requested the Court to instruct " * * * after you have determined just compensation for the fee simple estate taken by the government, you are instructed to determine what amount, if any, of such just compensation shall be awarded Earl Wagner by reason of such gravel contract." The Garretts having requested the Court to so instruct, they will not now be heard on their present complaint that the lease value should have been added to the total award. With respect to the government's objection that this was a matter solely for the Court, suffice to say that it was within the province of the Court to assign this task to the Commission. Rule 71A(h) and Rule 53(c) Fed. R. Civ. P. See, Moore's Federal Practice, 2d Ed., Vol. 5, § 53.06. It was proper for the Court to instruct the Commission to first determine the value of the total interest taken by the government and then ascertain the proportion of each party's interest therein. Gawzner v. Lebenbaum, 180 F. 2d 610, 613 (9th Cir. 1950); Eagle Improvement Co. v. U. S., supra; United States v. 31.07 Acres of Land, 189 F. Supp. 845, 848 (D. Montana 1960). In this case there was no evidence offered of the market value of the lease or the market value of real estate subject to a gravel lease. The Commission thus considered the various factors enumerated in its report in determining the actual value of the lease. It must be recognized that seldom, if ever, will there be evidence from which the market value of a lease may be determined. It is the view of the Court that the Commission's de-

termination of the value of the lease and the basis therefor is supported by the evidence and the same is approved.

* * * * *

Dated this 19 day of October, 1966.

/s/ Roy L. Stephenson
CHIEF JUDGE

CONFIRMATION OF REPORT OF CONDEMNATION COMMISSION AND JUDGMENT ON JUST COMPENSATION AND ORDER OF DISTRIBUTION, filed November 15, 1966

NOW on this 15th day of November, 1966, this matter comes before the Court for confirmation of the Report of Condemnation Commission herein filed on April 20, 1966, and for entry of judgment on just compensation, as to Tract No. 866, in this cause, and the Court having reviewed the file in this cause, finds:

1. That the Court has jurisdiction of the parties and subject matter of this action; that the tract herein referred is Tract No. 866 in this cause, which said tract is described in Declaration of Taking herein filed, said description being further set forth in Appendix "A" hereto.

2. That service of process has been

perfected on all parties defendant as to said tract, being those persons now ascertained who had an interest in said tract on date of taking, to-wit: February 14, 1962.

3. That on the 14th day of February, 1962, the estates taken in the above designated tract vested in the United States of America, upon the filing of the Declaration of Taking and the depositing therewith in the Registry of this Court the sum of $62,000.00, which sum was estimated by the acquiring agency to be the just compensation for the estates taken in said tract.

* * * * *

7. That the issue of just compensation for said taking was referred to a Condemnation Commission by Order of this Court dated August 2, 1963, and that in accordance with the instructions of this Court thereafter entered and upon trial of said issue, said Commission reported its findings to this Court on April 20, 1966.

8. That the award of the Condemnation Commission, as reported to this Court by said Report of Condemnation Commission, should be confirmed, accepted and adopted as the findings of fact of this Court as to said tract, said Report finding the fair and reasonable market value of the estates taken in Tract No. 866 on date of taking herein to be $121,800.00; that interest should be further awarded on the difference between the amount deposited in the Registry of this Court and said award, from February 14,

1962, to the date of deposit of said amount, excluding the period from February 23, 1966 to April 4, 1966, the difference being $65,700.00.

9. That the other and remaining finds of said Commission as so reported should be confirmed, accepted, and adopted as findings of fact of this Court.

10. That the persons who should receive the award herein adjudicated, for said Tract are Julian Garrett, Loyat Bland Garrett, Neill Garrett, Pearl Garrett and Earl Wagner, and that, upon the deposit of the above said difference, with interest, in the Registry of this Court, distribution thereof should be made.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That on February 14, 1962, plaintiff, United States of America, filed herein its Complaint in Condemnation, which included the real property designated in these proceedings as Tract No. 866, the legal description of said lands being more fully set forth in said Complaint in Condemnation.

2. That on the same day plaintiff filed in this action a Declaration of Taking, which included the aforesaid property, and deposited in the Registry of this Court the sum of $62,000.00 as the estimated just compensation therefor; that thereupon, the estate and interest in and to

said property, described and fully set forth in said Declaration of Taking as condemned herein by the United States of America, became vested in the plaintiff, United States of America; that possession of said tract is confirmed in plaintiff as of the first day of March, 1962.

3. That on the fourteenth day of February, 1962, title to the extent of the estates acquired, as described in plaintiff's Complaint and Declaration of Taking, in the above-designated tract, vested in the plaintiff, United States of America, free and discharged from all liens and claims whatsoever; and the right to just compensation for the property taken vested on the same date in the persons entitled thereto.

4. That the total sum of $121,800.00 is hereby awarded as just compensation in full for the taking of said estates in the hereinbefore described land, all in accordance with the findings, conclusions and recommendations of the Commission filed herein.

5. That the findings of the Condemnation Commission as to the above captioned tract, as reported to this Court by said Commission, are hereby confirmed, accepted, and adopted as the findings of this Court; and the award of just compensation for the taking of said tract as so reported, is hereby adopted and adjudged as just compensation for said taking; said amount being $121,800.00 with interest as hereinafter described; and said amount, $121,800.00,

is herebys decreed against plaintiff, United States of America and in favor of the person entitled thereto, said amount including and representing deficiency judgment against plaintiff, United States of America, in the amount of $65,700.00, with interest accruing on the deficiency amount from February 14, 1962, to date of deposit of said deficiency amount in the Registry of this Court at the rate of six per centum per annum. However, it has been agreed that on any increase above the deposit allowed the Garretts and on any money awarded Wagner, that interest would be waived for the period from February 23, 1966 until April 4, 1966.

6. That all defendants, known or unknown, named and designated in the Complaint herein, other than those to whom compensation is specifically awarded herein are hereby forever barred and excluded from asserting any title, interest or estate in, lien upon or claim against the estates taken in said tract.

IT IS FURTHER ORDERED that, upon deposit of the amount of said deficiency judgment by plaintiff, United States of America, in the Registry of this Court, disbursement of said compensation shall be made as follows:

TO: JULIAN GARRETT, LOYAT BLAND GARRETT, NEILL GARRETT AND PEARL GARRETT, the sum of $62,500.00, plus interest

at 6% on the sum of $60,
700.00 from February 14,
1962, to date of deposit of
deficiency amount, excluding
the period from February 23,
1966 to April 4, 1966, a per-
iod upon which the interest of
the deficiency was waived by
the defendants Garrett; * * * *

TO: EARL WAGNER, the sum of
$5,000.00, plus interest at 6%
on the sum of $5,000.00 from
February 14, 1962 to date of
deposit of this amount, exclud-
ing the period from February
23, 1966, to April 4, 1966, a
period upon which interest was
waived by defendant Wagner;

the balance of said compensation having been heretofore disbursed pursuant to prior Order of this Court.

DATED THIS 15th DAY OF NOVEMBER, 1966.

/s/ Roy L. Stephenson
CHIEF JUDGE

U.S. v. 1087.42 Acres etc, and Gerrit Van Mever, et al, No. 5-1330, Tracts 303, 306;
U.S. v. 520.24 Acres etc, and Ralph C. Kuiper,

et al, No. 5-1411, Tract 359; (Involved Garrett-Klein gravel lease)

MEMORANDUM filed December 13, 1966

This matter is now before the Court upon the objections of the plaintiff and the defendants to the report of the Commission fixing the value of tracts 303, 306 and 359. * * * * * The defendants Jake Klein, Loyatt Bland Garrett and Julian Garrett filed a twenty-one page pleading on November 23, 1966, entitled "motion to strike and plea to the jurisdiction." It was signed by the foregoing defendants but not by counsel of record appearing for said defendants. Plaintiff has moved to strike defendants' motion for the reason the same was not timely filed. Defendants made no application for an extension of time in which to file objections to the Commission's amended report. The "motion to strike and plea to the jurisdiction" was not timely filed and will therefore be stricken and not considered by the Court. Rules 71A(h), 53(e)(II). It is noted, however, that the contentions of defendants' motion were raised in substance in the original objections to the Commission's report filed by counsel for defendants Loyat Bland Garrett and Julian Garrett. The matters were also raised in oral arguments to the Court by attorneys for all of the defendants.

* * * *

The government contends the Commission's award for land value of $117,345.00 is excessive. The Commission also found that the enhancement

to tract 306 by reason of sand and gravel was $6,000 for a total value of $123,345. Reference throughout is to tract 306 (812 acres). Tract 303 (1 acre) award $310; and tract 359 (3.96 acres) $560., are not in dispute. The Garretts contend that the "Commissioners erred on the conservative side in their determination of just compensation, and that the Court should increase said amounts to a more realistic and actual just compensation."

* * * *

The Garretts next object to the finding of the Commission that:

> 5. The enhancement to tract 306 by reason of the sand and gravel which underlies a portion of this tract is hereby found to be $6,000 as of December 11, 1962.

The Garretts contend that evidence shows that the tract did contain marketable gravel and that it was in demand. The evidence before the Commission indicated that there was a very limited market for sand and gravel in this area. The mere presence of sand and gravel is not enough. "There must be some objective support for the future demand, including volume and duration." Mills v. United States, 363 F. 2d 78 (8th Cir. 1966). Under the circumstances the judgment of the Commission that the presence of sand and gravel increased the potential value of the farm in the sum of $6,000 is supported by the record.

In oral arguments the defendant Klein and the defendants Garretts contend that the award of $1,000 for the sand and gravel lease entered into between the Garretts and Klein on October 12, 1962, should under no circumstance have been deducted from the total award, and that any award for the gravel lease should have been in addition to that awarded for the tract, citing, Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W. 2d 205 (1963); Batcheller v. Iowa State Hgwy. Comm., 251 Iowa 364, 368-69, 101 N.W. 2d 30 (1960).

At the outset it should be noted that all of the defendants requested that the Court give the Commission the following specific instruction:

> In this case the ownership of the land is in the Garretts who entered into a gravel contract with Jake Klein. After you have determined just compensation for the fee simple estate taken by the Government, you are instructed to determine what amount, if any, of such just compensation shall be awarded Jake Klein by reason of such gravel contract.

It was proper for the Court to assign to the Commission the task of determining the value of the gravel lease and to deduct the sums from the total interest taken by the government. Rule 71A (h), 53 (c) Fed. R. Civ. F. See also, Moore's Federal Practice, 2 Ed., Vol. 5, § 53.06. The Commission first determined the entire in-

terest taken by the government, including the gravel lease and then determined the proportion of each party's interest thereon. Gawzner v. Lebenbaum, 180 F. 2d 610, 613 (9th Cir. 1950); Eagle Lake Improvement Co. v. United States, 160 F. 2d 182 (5th Cir. 1947); United States v. 31.07 Acres of Land, 189 F. Supp. 845, 848 (D. Montana 1960). The Commission noted that the letter from the Corps of Engineers to the Garretts announcing that condemnation proceedings were contemplated and that possession of the property would be taken March 1, 1963, was written September 27, 1962, which was prior to the date the lease was entered into. The Commission in its report indicated its belief "that the value of the Garrett-Klein gravel contract of October 12, 1962, estimated by Klein at $348,480 had nominal value only and no real value because of lack of markets for the sand and gravel and because of the quality of gravel and the expense of mining it, with a heavy overburden on top of it." The finding of the Commission that the lease had a value of $1,000 and that the same should be subtracted from the overall award of $124,215 is supported by the record. * * * * .

In summation, the Court finds that the report of the Commission, as amended, meets the requirements set by United States v. Merz, supra, and is in conformance with the Court's instructions. The findings as to value are amply supported by record now before the Court.

Dated this 13th day of December, 1966.

/s/ Roy L. Stephenson
CHIEF JUDGE

CONFIRMATION OF REPORTS OF CONDEMNATION COMMISSION AND JUDGMENT ON JUST COMPENSATION AND ORDER OF DISTRIBUTION, filed December 23, 1966

NOW, on this 22nd day of December, 1966, this matter comes before the Court for confirmation of the Report of Condemnation Commission herein filed on June 9, 1966, and the Amendment to Report of Commission filed October 18, 1966, and for entry of judgment on just compensation as to Tracts Nos. 303 and 306, Civil No. 5-1330, and Tract No. 359, Civil No. 5-1411, and the Court having reviewed the file in this cause finds:

1. That the Court has jurisdiction of the parties and subject matter to this action; that Tracts Nos. 303, 306 and 359 are more fully described in plaintiff's Declaration of Taking herein filed.

2. That service of process has been perfected on all parties defendant, being those persons now ascertained who had an interest in Tracts Nos. 303 and 306 on date of taking, December 11, 1962; and Tract No. 359 on July 16, 1963.

3. That on December 11, 1962, the estates taken in Tracts Nos. 303 and 306 vested in the United States of America, upon the filing of the Declaration of Taking and the depositing in the Registry of this Court estimated just compensation in the sum of $300.00 for Tract No. 303 and $85,100.00 for Tract No. 306; that on July 16, 1963, the estate taken in Tract No. 359 vested in the United States of America, upon the filing of the Declaration of Taking and the depositing in the Registry of this Court estimated just compensation in the sum of $10,000.00; that Orders for Delivery of Possession were entered herein granting plaintiff possession of said tracts as follows:

Tracts Nos. 303 and 306, Civil No. 5-1330. March 1, 1963;

Tract No. 359, Civil No. 5-1411, March 1, 1964;

* * * * *

8. * * * * * said report finding just compensation for the Garrett-Klein contract for sand and gravel dated October 12, 1962, in Tract No. 306, on date of taking to be $1,000.00, and that interest should be further awarded from December 11, 1962, to date of deposit of said award.

* * * * *

10. That the persons who should receive the award herein adjudicated, for said tracts are Julian Garrett, Loyat Bland Garrett,

and Jake Klein, and that, upon the deposit of the above said difference, with interest, in the Registry of this Court, distribution thereof should be made.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above and foregoing findings are hereby made a part of the judgment and order of the Court, and

1. That December 11, 1962, plaintiff, United States of America, filed herein its Complaint in Condemnation, which included Tracts Nos. 303 and 306; that July 16, 1963, plaintiff, United States of America, filed herein its Complaint in Condemnation which included Tract No. 359, the legal description of said lands being more fully set forth in said Complaints in Condemnation.

2. That on December 11, 1962, plaintiff filed in this action a Declaration of Taking, which included Tracts Nos. 303 and 306, and deposited in the Registry of this Court estimated just compensation in the sum of $300.00 for Tract No. 303 and $85,100.00 for Tract No. 306; that on July 16, 1963, plaintiff filed in this action a Declaration of Taking, which included the aforesaid property and deposited in the Registry of this Court estimated just compensation in the sum of $10,000.00 for Tract No. 359; that thereupon the estates and interest in and to said property, described and fully set forth in said Declarations of Taking as condemned

herein by the United States of America, became vested in the plaintiff, United States of America; that possession of said tracts is confirmed in plaintiff as follows:

Tracts Nos. 303 and 306, March 1, 1963;

Tract No. 359, March 1, 1964;

3. That on the 11th day of December, 1962, and July 16, 1963, title to the extent of the estates acquired, as described in plaintiff's Complaints and Declarations of Taking, in the above-designated tracts, vested in the plaintiff, United States of America, free and discharged from all liens and claims whatsoever; and the right to just compensation for the property taken vested on the same dates in the persons entitled thereto.

4. That the total sum of $124,215.00 is hereby awarded as just compensation in full for the taking of said estates in the hereinabove described land, all in accordance with the findings, conclusions and recommendations of the Commission filed herein.

5. That the findings of the Condemnation Commission as to the above captioned tracts, as reported to this Court by said Commission, are hereby confirmed, accepted and adopted as the findings of this Court; and the award of just compensation for the taking of said tracts as so

reported is hereby adopted and adjudged as just compensation for said taking, said amount being $124,215.00 with interest as hereinafter described; and said amount, $124,215.00, is hereby decreed against plaintiff, United States of America, and in favor of the persons entitled hereto, said amount including and representing deficiency judgment against plaintiff, United States of America, in the amount of $38,255.00, with interest accruing on the deficiency amount of $38,255.00 from December 11, 1962, to date of deposit of said deficiency amount in the Registry of this Court at the rate of six percent per annum.

6. That all defendants, known or unknown, named and designated in the Complaint herein, other than those to whom compensation is specifically awarded herein, are hereby forever barred and excluded from asserting any title, interest or estate in, lien upon, or claim against the estates taken in said tracts.

IT IS FURTHER ORDERED that upon deposit of the amount of said deficiency judgment by plaintiff, United States of America, in the Registry of this Court, distribution of said compensation shall be made as follows:

TO JULIAN GARRETT and
LOYAT BLAND GARRETT,
for Tract No. 306, the sum of
$45,755.00, plus interest at

6 percent on the sum of $37,245.00, from December 11, 1962, to date of deposit of deficiency amount; for Tract No. 303, the sum of $310.00, plus interest on the sum of $10.00 from December 11, 1962, to date of deposit of deficiency amount; for Tract No. 359, the sum of $560.00, to be paid from the original deposit of $10,000.00 for Tract No. 359;

TO JAKE KLEIN, the sum of $1,000.00, plus interest at 6 percent on the sum of $1,000.00 from December 11, 1962, to date of deposit of this amount;

* * * *

the balance of said compensation having been heretofore disbursed pursuant to prior order of this Court.

Dated this 22nd day of December, 1966.

/s/ Roy L. Stephenson
CHIEF JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that he is a member of the bar of this Court and that he served the above and foregoing Additional Appendix to Petition for Writ of Certiorari by mailing a true copy thereof by prepaid air mail to each of the following persons:

Hon. Erwin Griswold, Solicitor General
of the United States
Hon. Edwin L. Weisl, Jr., Asst. Attorney
General
Hon. Howard O. Sigmond

Bert A. Bandstra